

Montana Water Court
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FILED
01/31/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
39E-0166-P-2022
Stern, Anika
7.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

CLAIMANTS: Barton J. Burdick; Maralee Burdick

CASE 39E-0166-P-2022

39E 175491-00

39E 30139071

39E 30139072

39E 30139073

39E 30139074

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Barton Burdick and Maralee Burdick (the Burdicks) are the record owners of claims 39E 175491-00, 39E 30139071, 39E 30139072, 39E 30139073-00, and 39E 30139074.

2. The claims were decreed with DNRC issue remarks. The Burdicks were ordered to meet with the DNRC to address the following issue remarks:

Claim 39E 175491-00:

ON SEPTEMBER 4, 1960 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE PLACE OF USE IS ERRONEOUS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE OBJECTION LIST.

Claim 39E 30139071:

CLAIM NOS. 39E-30139071 AND 39E-175491-00 APPEAR TO BE DUPLICATE CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. 39E-30139071 REFLECTS A PRIORITY DATE OF 04/30/1959 AND CLAIM NO. 39E-175491 REFLECTS A PRIORITY DATE OF 04/30/1959 . IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

Claim 39E 30139072:

THIS CLAIM AND DECREED WATER RIGHT NUMBER 39E 175492-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT PARTS OF THE POINTS OF DIVERSION/PLACES OF USE ARE IDENTICAL. THE POINTS OF DIVERSION/ PLACES OF USE OVERLAP TO A GREAT EXTENT.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

Claim 39E 30139073:

THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

Claim 39E 30139074:

THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME ARE THE SAME.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

3. On November 14, 2022, DNRC Water Resource Specialist Brandy Gray filed a Memorandum stating the Burdicks failed to contact her; a copy is attached. Ms. Gray made recommendations for the disposition of the issue remarks. Based on Ms. Gray's recommendations, an Order Setting Filing Deadline was issued on November 21,

2022 requiring Claimants Barton J. Burdick and Maralee Burdick to file statements agreeing or disagreeing with the following, by December 23, 2022:

- **Claim 39E 175491-00:**

- The place of use will be modified as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rng	County
1			SESWNE	30	2N	62E	FALLON
2			NWSEW	26	2N	61E	FALLON
3			SWNWSE	25	2N	61E	FALLON
4			SESWSE	24	2N	61E	FALLON

- The issue remarks will be removed from the claim.

- **Claim 39E 30139071:**

- The place of use will be modified as follows:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rng	County
1			NWNE	30	2N	62E	FALLON
2			SWNE	30	2N	62E	FALLON
3			NENW	30	2N	62E	FALLON
4			SWNW	30	2N	62E	FALLON
5			SWNE	26	2N	61E	FALLON
6			SEW	26	2N	61E	FALLON
7			NESW	26	2N	61E	FALLON
8			SWSE	24	2N	61E	FALLON
9			NWSE	24	2N	61E	FALLON
10			SEW	24	2N	61E	FALLON

- The claim will be changed to a "use" right.
- The multiple use remark will be modified to reflect that it is a multiple use with claim 39E 175471-00 (in this Case), and 39E 175470-00 (not in front of the court)
- The issue remarks will be removed from the claim.

- **Claim 39E 30139072:**

- The point of diversion and place of use will be modified as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rng	County
1		3		20	2N	62E	FALLON
2		4		20	2N	62E	FALLON
3		1		20	2N	62E	FALLON
4		2		20	2N	62E	FALLON
5		3		20	2N	62E	FALLON
6		4		20	2N	62E	FALLON
7			NE	30	2N	62E	FALLON

- The claim will be changed to a "use" right.
- The issue remarks will be removed from the claim.

- **Claim 39E 30139073:**

- Claim should be dismissed.

- **Claim 39E 30139074:**

- Claim should be dismissed.

4. On December 15, 2022, Claimants Barton J. Burdick and Maralee Burdick filed a statement indicating they agree with Ms. Gray's recommendations except for her recommendations that claims 39E 30139073 and 39E 30139074 be dismissed. The December 15, 2022 filing stated, in part:

We disagree with Ms. Gray's proposed changes as these are not duplicate filings. The two maps she provided in her memorandum clarify claims 39E-30139073 and 39E-30139074. The maps show the three points of use houses prior to the July 1, 1973 date. The fourth dwelling was added after July 1, 1973 and was not intended to be a part of this filing.

The December 15, 2022 filing did not directly address the concerns Ms. Gray raised in her Memorandum.

5. Another Order Setting Filing Deadline was issued on December 23, 2023, ordering the Burdicks to file evidence addressing the concerns raised by Ms. Gray in the November 14, 2022 DNRC Memorandum regarding claims 39E 30139073 and 39E 30139074 by January 20, 2023. The Order also recommended the Burdicks contact Ms. Gray.

6. On January 6, 2023, the Burdicks filed documents including an emailed statement from Barton Burdick, a signed statement from the Burdicks, a copy of a January 6, 2023 letter from Brandy Gray to the Burdicks regarding claims 39E 30139073 and 39E 30139074 with attachments, and Motions to Amend claims 39E 30139073 and 39E 30139074.

7. The January 6, 2023 Burdick filing explained there was a clerical error in Brandy Gray's Memorandum and consequently, this Master's subsequent Order, as to the proposed place of use legal land description for claim 39E 30139071. According to the Burdicks, the place of use for claim 39E 30139071 should be modified as follows:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rng</u>	<u>County</u>
1			NWNE	30	2N	62E	FALLON
2			SWNE	30	2N	62E	FALLON
3			NENW	30	2N	62E	FALLON
4			SWNW	30	2N	62E	FALLON
5			SWNE	25	2N	61E	FALLON
6			SENW	25	2N	61E	FALLON
7			NESW	25	2N	61E	FALLON
8			SWSE	24	2N	61E	FALLON
9			NWSE	24	2N	61E	FALLON
10			SENW	24	2N	61E	FALLON

8. Based on the January 6, 2023 letter from Brandy Gray to the Burdicks, and the attached Motions to Amend, claims 39E 30139073 and 39E 30139074 should be modified to use rights. Additionally, claims 39E 175690-00, 39E 175491-00, 39E 30139071, 39E 30139073, and 39E 30139074 are multiple uses, according to Ms. Gray.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. The remarks decreed on some claims in this Case, noting the claims did not appear in the first decree in this Basin, are notice-type remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The claims in this Case should be modified as follows:

- **Claim 39E 175491-00:**
 - The place of use will be modified as follows:

Place of Use:

ID	Acres	Cont.Lot	Dir.Sec	Sec	Twp	Ran	County
1			SENWNE	30	2N	02E	FALLON
2			NWSENW	26	2N	01E	FALLON
3			SWNWSE	26	2N	01E	FALLON
4			SESWSE	24	2N	01E	FALLON

- The issue remarks should be removed from the claim.
- The multiple use remark should be modified to reflect all relevant claims.

• **Claim 39E 30139071:**

- The place of use will be modified as follows:

Place of Use:

ID	Acres	Cont.Lot	Dir.Sec	Sec	Twp	Ran	County
1			NWNE	30	2N	02E	FALLON
2			SWNE	30	2N	02E	FALLON
3			NENW	30	2N	02E	FALLON
4			SWNW	30	2N	02E	FALLON
5			SWNE	26	2N	01E	FALLON
6			SENE	26	2N	01E	FALLON
7			NESW	26	2N	01E	FALLON
8			SWSE	24	2N	01E	FALLON
9			NWSE	24	2N	01E	FALLON
10			SENE	24	2N	01E	FALLON

- The claim should be changed to a “use” right.
- The multiple use remark should be modified to reflect all relevant claims.
- The issue remarks should be removed from the claim.

• **Claim 39E 30139072:**

- The point of diversion and place of use will be modified as follows:

ID	Acres	Cont.Lot	Dir.Sec	Sec	Twp	Ran	County
1		3		20	2N	02E	FALLON
2		4		20	2N	02E	FALLON
3		1		20	2N	02E	FALLON
4		2		20	2N	02E	FALLON
5		3		20	2N	02E	FALLON
6		4		20	2N	02E	FALLON
7			NE	00	2N	02E	FALLON

- The claim should be changed to a “use” right.
- The issue remarks will be removed from the claim.

• **Claim 39E 30139073:**

- The claim should be changed to a “use” right.
- The multiple use remark should be modified to reflect all relevant claims.
- The issue remarks should be removed from the claim.

• **Claim 39E 30139074:**

- The claim should be changed to a “use” right.
- The multiple use remark should be modified to reflect all relevant claims.
- The issue remarks should be removed from the claim.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Barton J. Burdick
Maralee Burdick
2667 Webster Rd.
Baker, MT 59313-9726

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 175491-00 STATEMENT OF CLAIM

Version: 4 – POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 30.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNW	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SEWNW	30	2N	62E	FALLON
2			NWSEW	25	2N	61E	FALLON
3			SWNWSE	25	2N	61E	FALLON
4			SESWSE	24	2N	61E	FALLON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00

175491-00

30139071

30139073

30139074

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30139071 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 30.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	30	2N	62E	FALLON
2			NENE	30	2N	62E	FALLON
3			SENE	30	2N	62E	FALLON
4			SENE	25	2N	61E	FALLON
5			NENE	25	2N	61E	FALLON
6			NENE	24	2N	61E	FALLON
7			SENE	24	2N	61E	FALLON

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: NENE SECTION 30 T2N R62E.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00

175491-00

30139071

30139073

30139074

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30139072 STATEMENT OF CLAIM

Version: 2 – POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: DECEMBER 17, 1949

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BOXELDER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3		20	2N	62E	FALLON
Period of Diversion:	MARCH 15 TO DECEMBER 4					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2	4		20	2N	62E	FALLON
Period of Diversion:	MARCH 15 TO DECEMBER 4					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3	1		29	2N	62E	FALLON
Period of Diversion:	MARCH 15 TO DECEMBER 4					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4	2		29	2N	62E	FALLON
Period of Diversion:	MARCH 15 TO DECEMBER 4					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5	3		29	2N	62E	FALLON
Period of Diversion:	MARCH 15 TO DECEMBER 4					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SENE AND NESE OF SECTION 30 T2N R62E.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30139073 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 2.76 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWN	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWN	30	2N	62E	FALLON
Total:	0.50						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00 175491-00 30139071 30139073 30139074

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139073 30139074

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 30139074 STATEMENT OF CLAIM

Version: 2 – POST DECREE

Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313 9726

Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 1.80 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWNNE	30	2N	62E	FALLON

Total: 0.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00 175491-00 30139071 30139073 30139074

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139073 30139074

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ELECTRONICALLY FILED

39E-0166-P-2022

November 14, 2022

Billings Water Resources Office



GREG GIANFORTE, GOVERNOR

Montana Water Court

PHONE: (406)247-4415
FAX: (406)247-4416

Airport Business Park
1371 Rimtop Dr, Billings, MT 59105-1978

MEMORANDUM

DATE: November 14, 2022

CASE HEADING: **39E-0166-P-2022**

**CLAIM: 39E 175491-00, 39E 30139071,
39E 30139072, 39E 30139073,
39E 30139074**

TO: Anika M. Stern
Senior Water Master

FROM: Brandy Gray
Billings Water Resource Specialist

CLAIMANTS: Barton J. Burdick and Maralee Burdick

INTRODUCTION:

The October 4, 2022, Order from the Montana Water Court required Barton J. Burdick and Maralee Burdick, to contact DNRC no later than October 21, 2022, to resolve issue remarks and submit any documents needed to support resolution no later than November 4, 2022. It was further ordered that the DNRC provide a Memorandum, by November 16, 2022, of recommendations on the results or file a notice with the Water Court informing the Water Court that the issue remarks were not resolved by the deadline. Furthermore, if the Claimant doesn't contact the DNRC, it was requested that the DNRC make recommendations for the disposition of the issue remarks.

MATERIALS REVIEWED:

- Information in the claim files.
- USGS Topographic Map for the areas below.
- Earth Explorer USGS aerial photo no. 1VEQM00020077, dated September 15, 1978: <https://earthexplorer.usgs.gov/>
- MT State Library NAIP true color and false color aerial photos dated, 2009, 2011, 2013, 2015, 2017 & 2019.

DISCUSSION:

As of November 14, 2022, DNRC has not received contact from Barton J. Burdick or Maralee Burdick.

CLAIM 39E 175491-00: 1959 STOCK, in Sections 24 & 25, T2N, R62E and Section 30, T2N, R62E, from a well.

Issue Remarks:

GIS – ON SEPTEMBER 4, 1990, THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE PLACE OF USE IS ERRONEOUS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE OBJECTION LIST.

DNRC reviewed the information in the claim file and the Memorandum from DNRC, dated September 4, 1990. There appears to be a clerical error on place of use ID no. 2, 3 & 4 (Sections 24 & 25). The range was claimed as R62E and it should be R61E.

(See attached, a highlighted copy of the original claim map.)

RECOMMENDATION:

Based on the above information, it is recommended that the ranges for place of use ID no. 2, 3 & 4 be corrected to R61E and that general information issue remark (GIS) be removed as it appears resolved.

CLAIM 39E 30139071: 1959 STOCK, in Sections 24 & 25, T2N, R61E and Section 30, T2N, R62E, from a well.

Issue Remarks:

D91 – CLAIM NOS. 39E-30139071 AND 39E-175491-00 APPEAR TO BE DUPLICATE CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. 39E-30139071 REFLECTS A PRIORITY DATE OF 04/30/1959 AND CLAIM NO. 39E-175491 REFLECTS A PRIORITY DATE OF 04/30/1959. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

P355 – THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

DNRC reviewed the files and claim maps for 39E 175491-00 and 39E 30139071. There appears to be three place of use tank locations on 39E 30139071 that are duplicate with 39E 175491-00. These are the SWSE of Sec. 24 and the SENW of Sec. 25, T2N, R61E and the NWE of Sec. 30, T2N, R62E. Removing these three locations would resolve the duplicate issue remark.

Information in claim file 39E 30139071 suggests that the type of historical right for this water right is Use. Changing the type of historical right to Use would resolve the type of historical right and priority date issue remark.

Water rights 39E 175490-00, 39E 175491-00 and 39E 30139071 use the same well for different purposes and therefore are considered multiple use.

RECOMMENDATION:

Based on the above information, it is recommended that place of use ID no. 1, 6 & 8 (NWNE of Sec. 30, T2N, R62E, SENW of Sec. 25 & the SWSE of Sec. 24, T2N, R61E) be removed, that the type of historical right be changed to Use, that duplicate issue remark (D91) and priority date issue remark (P355) be removed as they appear resolved and that 39E 175490-00 and 39E 175491-00 be added to the multiple use tab.

If the Water Court agrees with the recommendations for 39E 30139073 and 39E 30139074 below, then it is further recommended that 39E 30139073 and 39E 30139074 be removed from the multiple use tab.

CLAIM 39E 30139072: 1949 STOCK, in Sections 20, 29 & 30, T2N, R62E, from Boxelder Creek.

Issue Remarks:

DUIS – THIS CLAIM AND DECREED WATER RIGHT NUMBER 39E 175492-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT PARTS OF THE POINTS OF DIVERSION/PLACES OF USE ARE IDENTICAL. THE POINTS OF DIVERSION/ PLACES OF USE OVERLAP TO A GREAT EXTENT.

P355 – THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

DNRC reviewed the files and claim maps for 39E 175492-00 and 39E 30139072. There appears to be one point of diversion and place of use location on 39E 30139072 that is duplicate with 39E 175492-00. That is the NE of Sec. 30, T2N, R62E. Removing this location would resolve the duplicate issue remark.

Information in claim file 39E 30139072 suggests that the type of historical right for this water right is Use. Changing the type of historical right to Use would resolve the type of historical right and priority date issue remark.

RECOMMENDATION:

Based on the above information, it is recommended that point of diversion and place of use ID no. 7 (NE of Sec. 30, T2N, R62E) be removed, that the type of historical right be changed to Use, and that duplicate issue remark (DUIS) and priority date issue remark (P355) be removed as they appear resolved. It is further recommended that the geocodes for the NE of Sec. 30, T2N, R62E (39-1173-30-1-01-01-0000 & 39-1173-30-1-02-01-0000) be removed.

CLAIM 39E 30139073: 1959 DOMESTIC, in Section 30, T2N, R62E, from a well.

Issue Remarks:

DUIS – THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.

P355 – THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

DNRC reviewed the files and claim maps for 39E 175490-00 and 39E 30139073. DNRC also reviewed the above 1978 USGS aerial photo and was able to locate one house within the NWNE of Section 30, T2N, R62E, that existed prior to July 1, 1973. These two water rights appear to be claiming the same pre-July 1, 1973, house, and lawn, and therefore are duplicate.

RECOMMENDATION:

Based on the above information, it is recommended that 39E 30139073 be dismissed, as only one water right is needed for this one pre-July 1, 1973, house.

CLAIM 39E 30139074: 1959 DOMESTIC, in Section 30, T2N, R62E, from a well.

Issue Remarks:

DUIS – THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.

P355 – THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

Statements of Claim are water rights filed on developments of water (wells) for purposes (house & lawn) that were put to historical beneficial use prior to July 1, 1973. (Well was drilled and used in the house prior to July 1, 1973.)

DNRC reviewed the files and claim maps for 39E 175490-00 and 39E 30139074. DNRC also reviewed the above 1978 USGS aerial photo and was able to locate one house within the NWNE of Section 30, T2N, R62E, that existed prior to July 1, 1973. These two water rights appear to be claiming the same pre-July 1, 1973, house, and lawn, and therefore are duplicate or 39E-30139074 is claiming a house that was hooked to this well post-July 1, 1973, and therefore does not meet the definition of an Exempt Right under Section 85-2-222(1), MCA.

It appears that the Claimant needs to file a Notice of Completion of Groundwater Development (Form 602) for the house hooked to this well post-July 1, 1973.

http://dnrc.mt.gov/divisions/water/water-rights/docs/forms/602-revised-12-2016_fillable.pdf

RECOMMENDATION:

Based on the above information, it is recommended that 39E 30139074 be dismissed.

DATE: November 14, 2022, by: /s/ Brandy Gray
Brandy Gray, Water Resource Specialist
Billings Water Resources Regional Office
(406) 247-4426

DATE: November 14, 2022, by: /s/ Mark Elison
Mark Elison, Regional Manager
Billings Water Resources Regional Office

Enclosures:

- 39E 175491-00
 - Blue marked General Abstract.
 - Highlighted copy of claim map.
- 39E 30139071
 - Blue marked General Abstract.
 - Amended place of use map.
- 39E 30139072
 - Blue marked General Abstract.
 - Amended point of diversion & place of use map.
 - Highlighted copy of 39E 175492-00 claim map.
- 39E 175490-00 - *Courtesy copy for 39E 30139073 & 39E 30139074 below.*
 - *General Abstract*
 - *Highlighted copies of claim maps (2 pages)*
- 39E 30139073
 - Blue marked General Abstract.
 - Copy of claim map.
 - 1978 Earth Explorer USGS aerial photo.
- 39E 30139074
 - Blue marked General Abstract.
 - Copy of claim map.
 - 1978 Earth Explorer USGS aerial photo with USGS Topographic Map, for 39E 175490-00, 39E 30139073 & 39E 30139074.
 - 1978 Earth Explorer USGS aerial photo.
 - 2009 MT State Library NAIP false color aerial photo.

Service via email:
Anika M. Stern
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
watercourt@mt.gov

Service via USPS Mail:
Barton J Burdick
Maralee Burdick
2667 Webster Rd
Baker, MT 59313-9726

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 175491-00 STATEMENT OF CLAIM

Version: 3 -- REEXAMINED

Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959

Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (Use): STOCK

Maximum Flow Rate: 30.00 GPM

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNW	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SEWNW	30	2N	62E	FALLON
2			NWSEWN	25	2N	62E 61E	FALLON
3			SWNWSE	25	2N	62E 61E	FALLON
4			SESWSE	24	2N	62E 61E	FALLON

Geocodes/Valid: 39-1172-24-1-01-01-0000 - Y 39-1172-25-1-01-01-0000 - Y
39-1172-25-1-02-01-0000 - Y 39-1173-30-1-02-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00

175491-00

30139071

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 05/06/86.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 03/21/94.

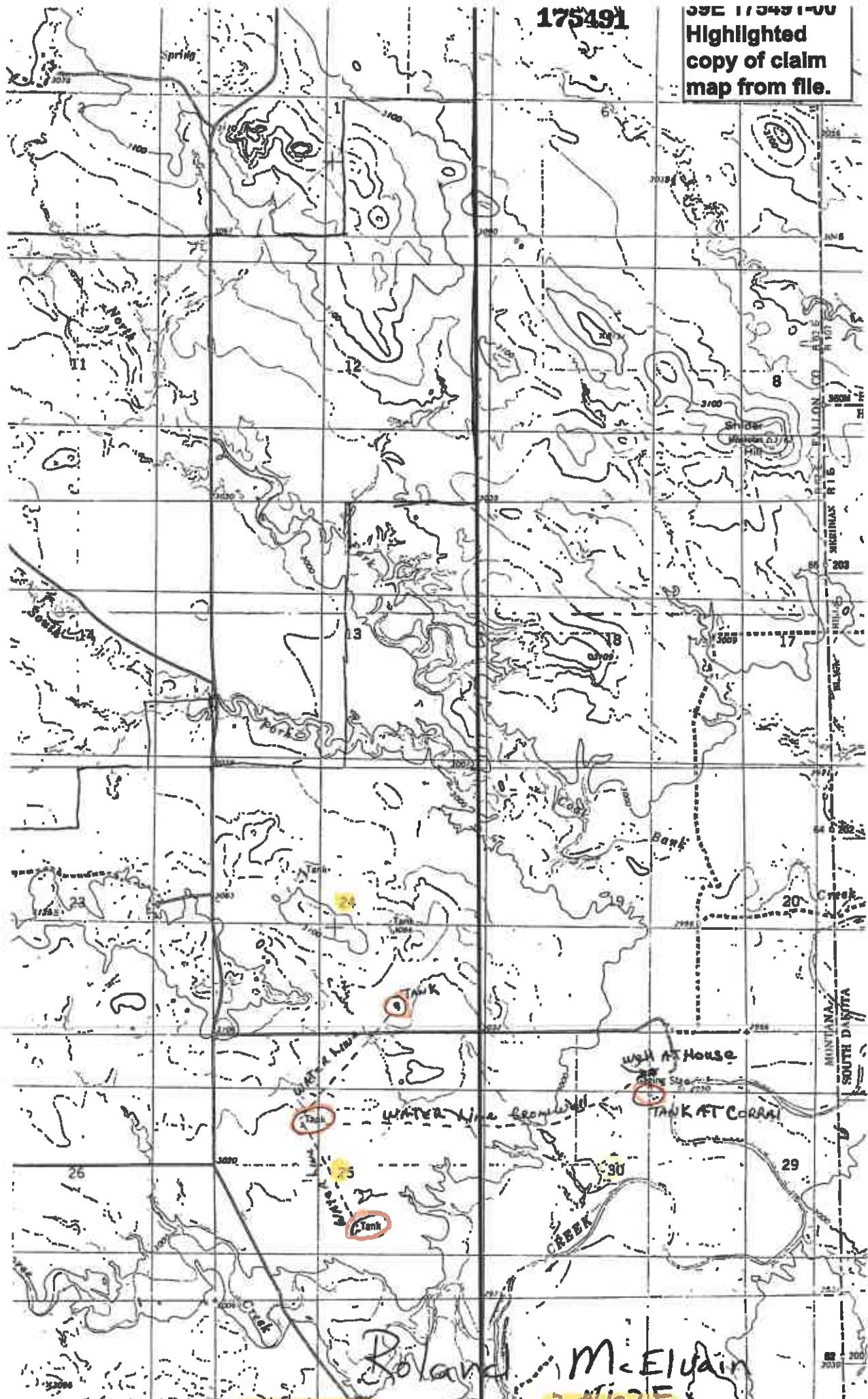
IS -

~~ON SEPTEMBER 4, 1990 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT THE PLACE OF USE IS ERRONEOUS. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE OBJECTION LIST.~~

175491

39E 175491-00

Highlighted
copy of claim
map from file.



STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 30139071 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959

Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: ~~FILED~~ USE

Purpose (Use): STOCK

Maximum Flow Rate: 30.00 GPM

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWN	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4			NWNE	30	2N	62E	FALLON
2			SWNE	30	2N	62E	FALLON
3			NENW	30	2N	62E	FALLON
4			SWNW	30	2N	62E	FALLON
5			SWNE	25	2N	61E	FALLON
6			SENW	25	2N	61E	FALLON
7			NESW	25	2N	61E	FALLON
8			SWSE	24	2N	61E	FALLON
9			NWSE	24	2N	61E	FALLON
10			SENW	24	2N	61E	FALLON

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS.
THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE
FOLLOWING PRIVATE LANDS: NWN SECTION 30 T2N R62E.

Geocodes/Valid: 39-1172-24-1-01-01-0000 - Y 39-1172-25-1-01-01-0000 - Y
39-1173-30-1-02-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE
USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT.
RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN
ACCORD WITH HISTORICAL PRACTICES.

30139071 30139073 30139074 175490-00 175491-00

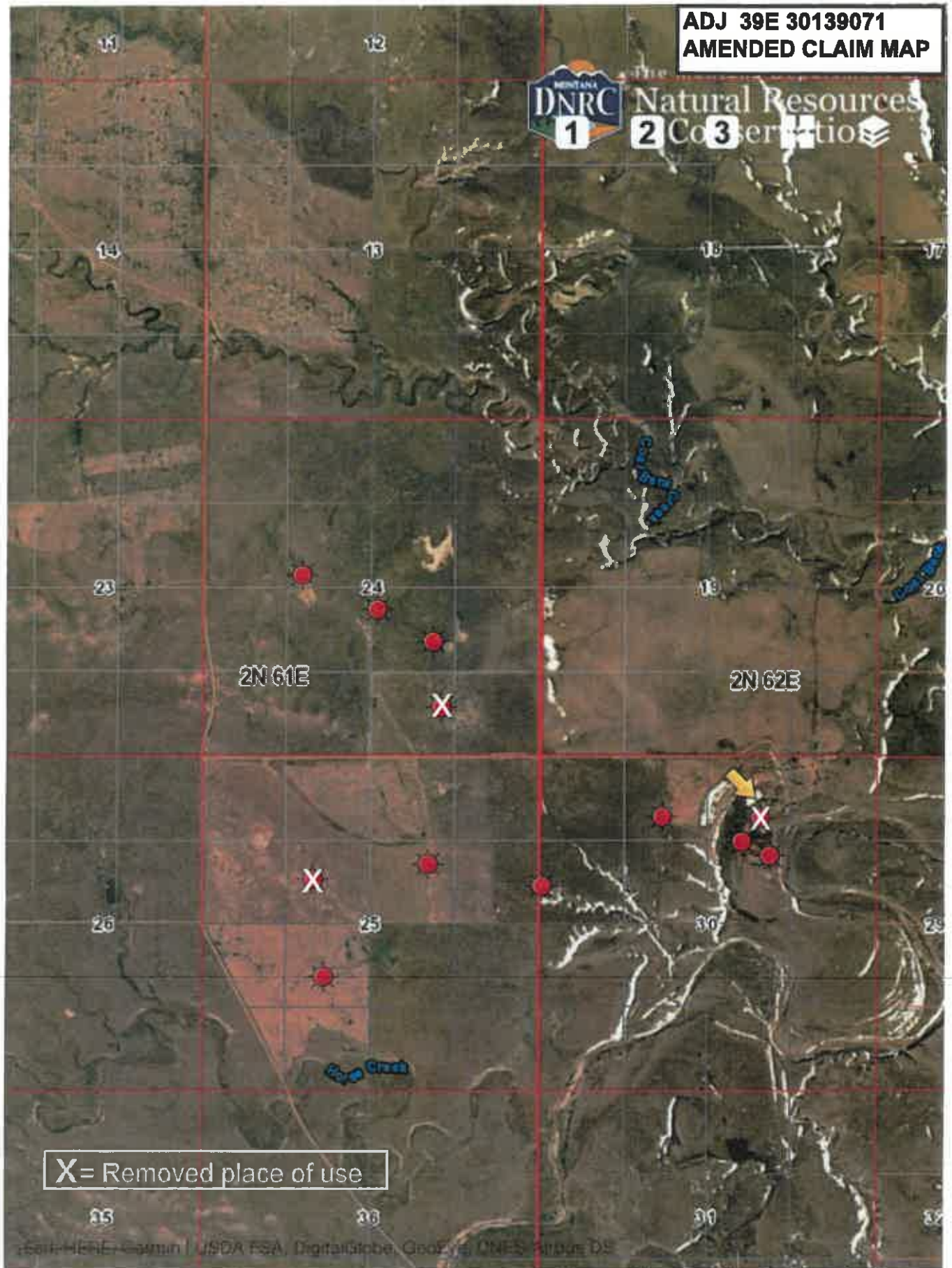
THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 12/23/2019: TO MULTIPLE USE.

31 - ~~CLAIM NOS. 39E 30139071 AND 39E 175491-00 APPEAR TO BE DUPLICATE CLAIMS ON THE SAME HISTORIC
APPROPRIATION OF WATER. CLAIM NO. 39E 30139071 REFLECTS A PRIORITY DATE OF 04/30/1959 AND
CLAIM NO. 39E 175491 REFLECTS A PRIORITY DATE OF 04/30/1959. IT APPEARS ONLY ONE WATER RIGHT
IS INVOLVED.~~

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

355 - ~~THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO
SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.~~

ADJ 39E 30139071
AMENDED CLAIM MAP



X= Removed place of use

well - Point of Diversion ~~SE~~ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 30-2N-62E
Place of use

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201801 HELENA, MONTANA 59620-1801

GENERAL ABSTRACT

Water Right Number: 39E 30139072 STATEMENT OF CLAIM

Version: 1 – ORIGINAL RIGHT

Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: DECEMBER 17, 1949

Enforceable Priority Date: DECEMBER 17, 1949

Type of Historical Right: FILED

Purpose (Use): STOCK

Maximum Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Maximum Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BOXELDER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3		20	2N	62E	FALLON
Period of Diversion: MARCH 15 TO DECEMBER 4						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2	4		20	2N	62E	FALLON
Period of Diversion: MARCH 15 TO DECEMBER 4						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3	1		29	2N	62E	FALLON
Period of Diversion: MARCH 15 TO DECEMBER 4						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4	2		29	2N	62E	FALLON
Period of Diversion: MARCH 15 TO DECEMBER 4						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
5	3		29	2N	62E	FALLON

Period of Diversion: MARCH 15 TO DECEMBER 4

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

6 4 29 2N 62E FALLON

Period of Diversion: MARCH 15 TO DECEMBER 4

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

7 NE 30 2N 62E FALLON

~~**Period of Diversion:** MARCH 15 TO DECEMBER 4~~

~~**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE~~

Period of Use: MARCH 15 to DECEMBER 4

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		3		20	2N	62E	FALLON
2		4		20	2N	62E	FALLON
3		1		29	2N	62E	FALLON
4		2		29	2N	62E	FALLON
5		3		29	2N	62E	FALLON
6		4		29	2N	62E	FALLON
7			NE	30	2N	62E	FALLON

ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SENE AND NESE OF SECTION 30 T2N R62E.

Geocodes/Valid: 39-1173-20-3-02-01-0000 - Y 39-1173-29-2-02-03-0000 - Y
39-1173-29-3-03-01-0000 - Y ~~39-1173-30-1-01-01-0000 - Y~~
~~39-1173-30-1-02-01-0000 - Y~~

Remarks:

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 12/23/2019: POD/POU.

355 THIS CLAIM AND DECREED WATER RIGHT NUMBER 39E 175492-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT PARTS OF THE POINTS OF DIVERSION/PLACES OF USE ARE IDENTICAL. THE POINTS OF DIVERSION/PLACES OF USE OVERLAP TO A GREAT EXTENT.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

ADJ 39E 30139072
AMENDED CLAIM MAP



The Natural Resources
Conservation Service

point of diversion & place of use

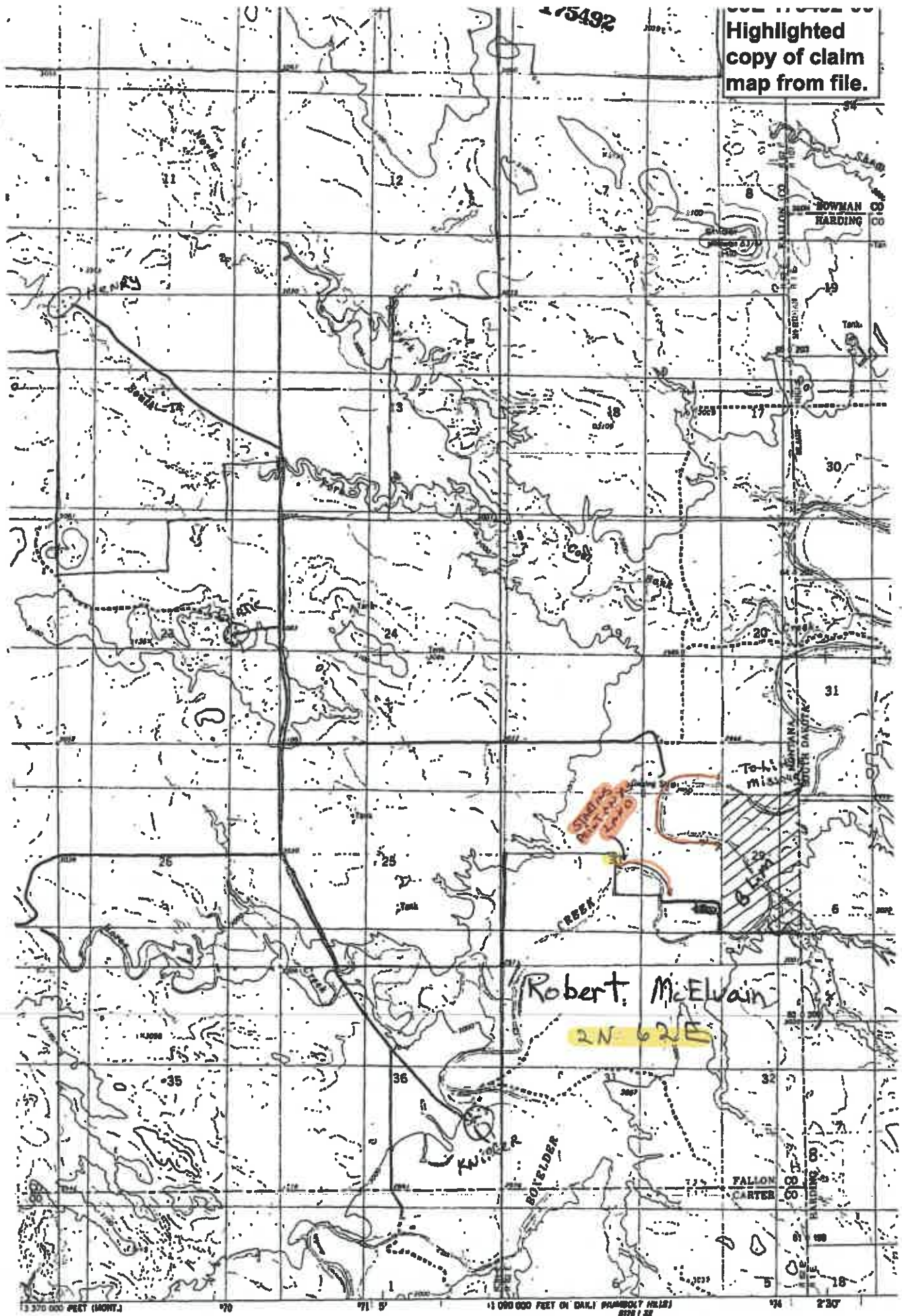
point of diversion & place of use

X = Removed point of diversion & place of use

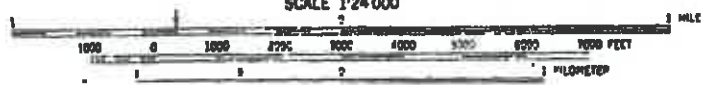
Boxelder creek - Fallon County

175492

Highlighted
copy of claim
map from file.



and published by the Geological Survey
USGS/NOAA
examined methods from aerial photographs
checked 1974 Map edited 1980



COURTESY COPY

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 175490-00 STATEMENT OF CLAIM

Version: 2 – REEXAMINED

Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959

Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Maximum Flow Rate: 30.00 GPM

Maximum Volume: 3.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWN	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SEWN	30	2N	62E	FALLON

Total: 1.00

Geocodes/Valid: 39-1173-30-1-02-01-0000 - Y

Remarks:

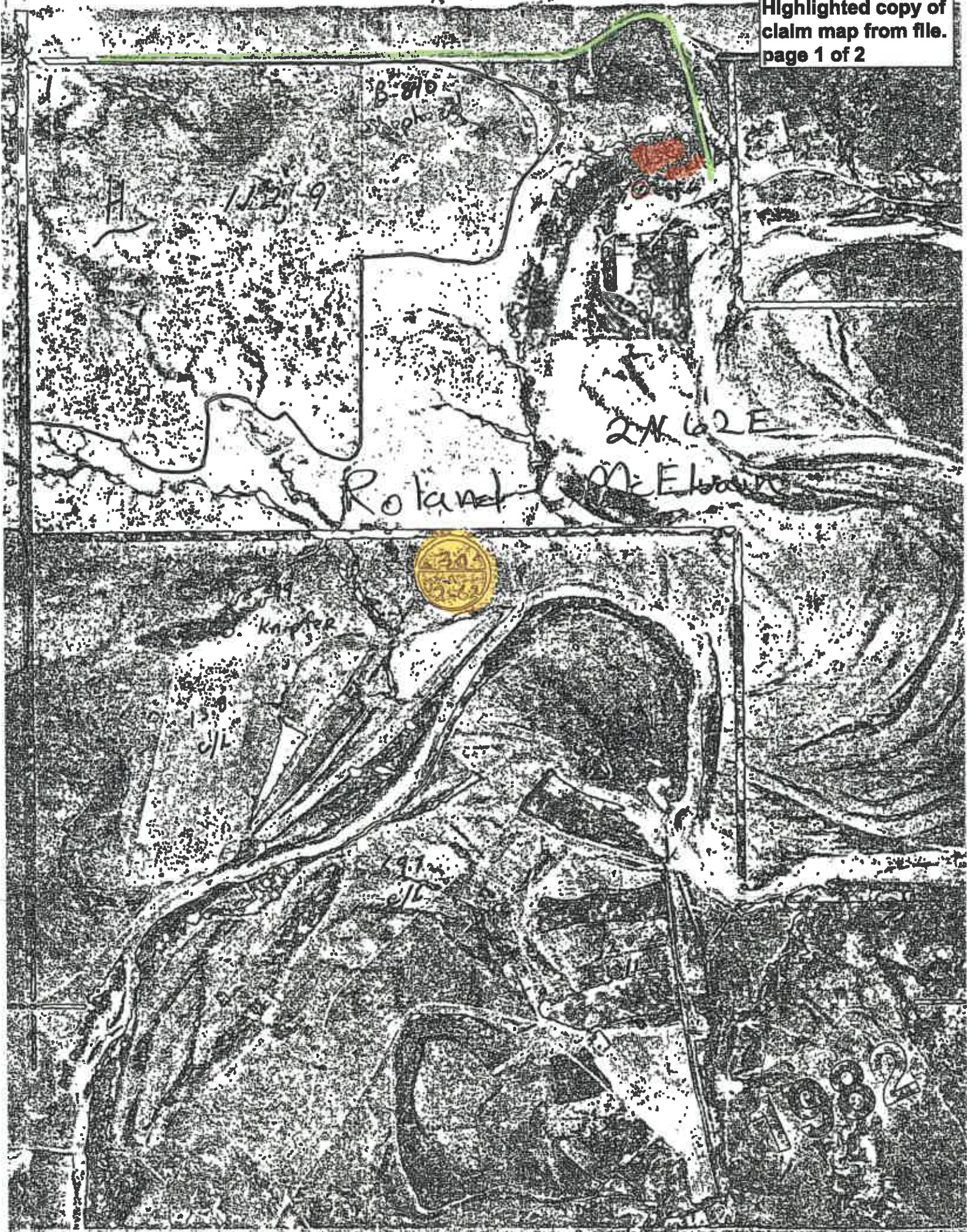
THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

175490-00 175491-00

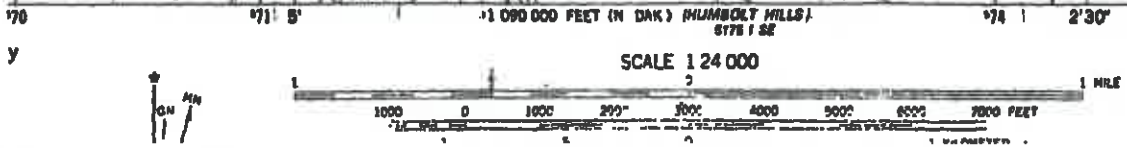
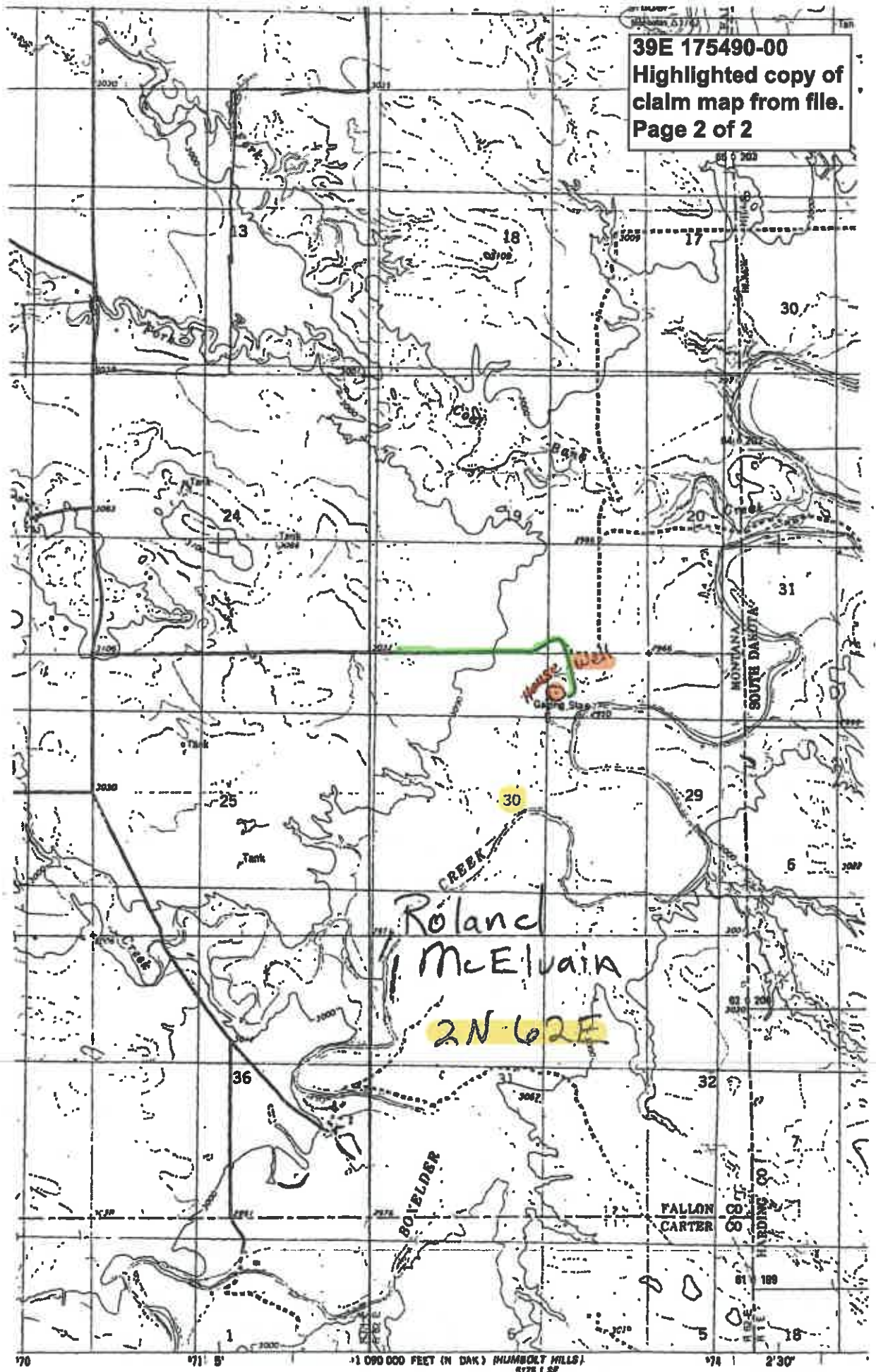
STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 05/06/86.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 03/21/94.



39E 175490-00
Highlighted copy of
claim map from file.
Page 2 of 2



STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 30139073 STATEMENT OF CLAIM
Version: 1 – ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726
MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959
Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Maximum Flow Rate: 30.00 GPM
Maximum Volume: 2.76 AC-FT

Households: 1
Maximum Acres: 0.50
Source Name: GROUNDWATER
Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWN	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWN	30	2N	62E	FALLON

Total: 0.50

Geocodes/Valid: 39-1173-30-1-02-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139073

30139074

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139071

30139073

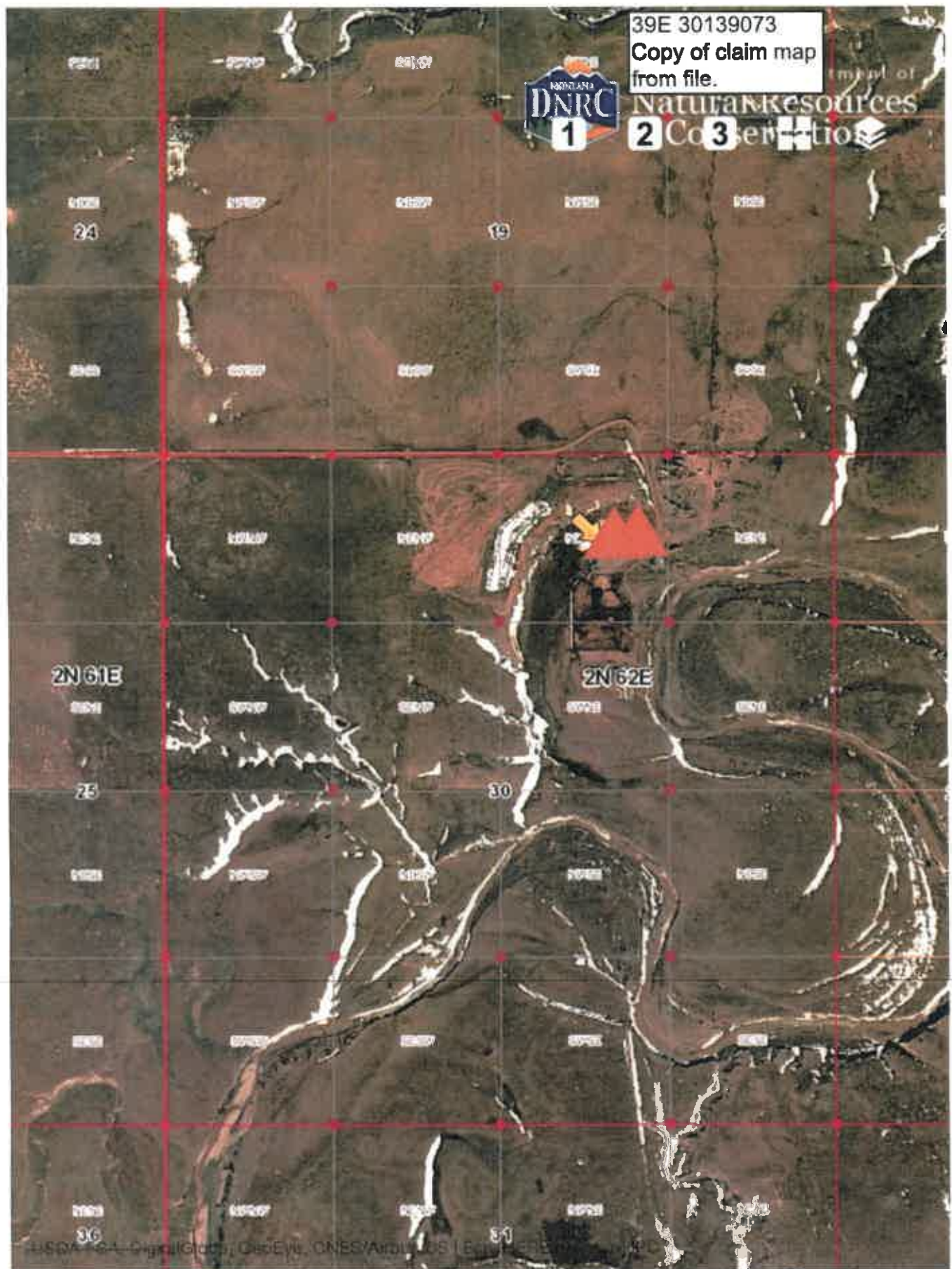
30139074

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 12/23/2019: TO MULTIPLE USE.

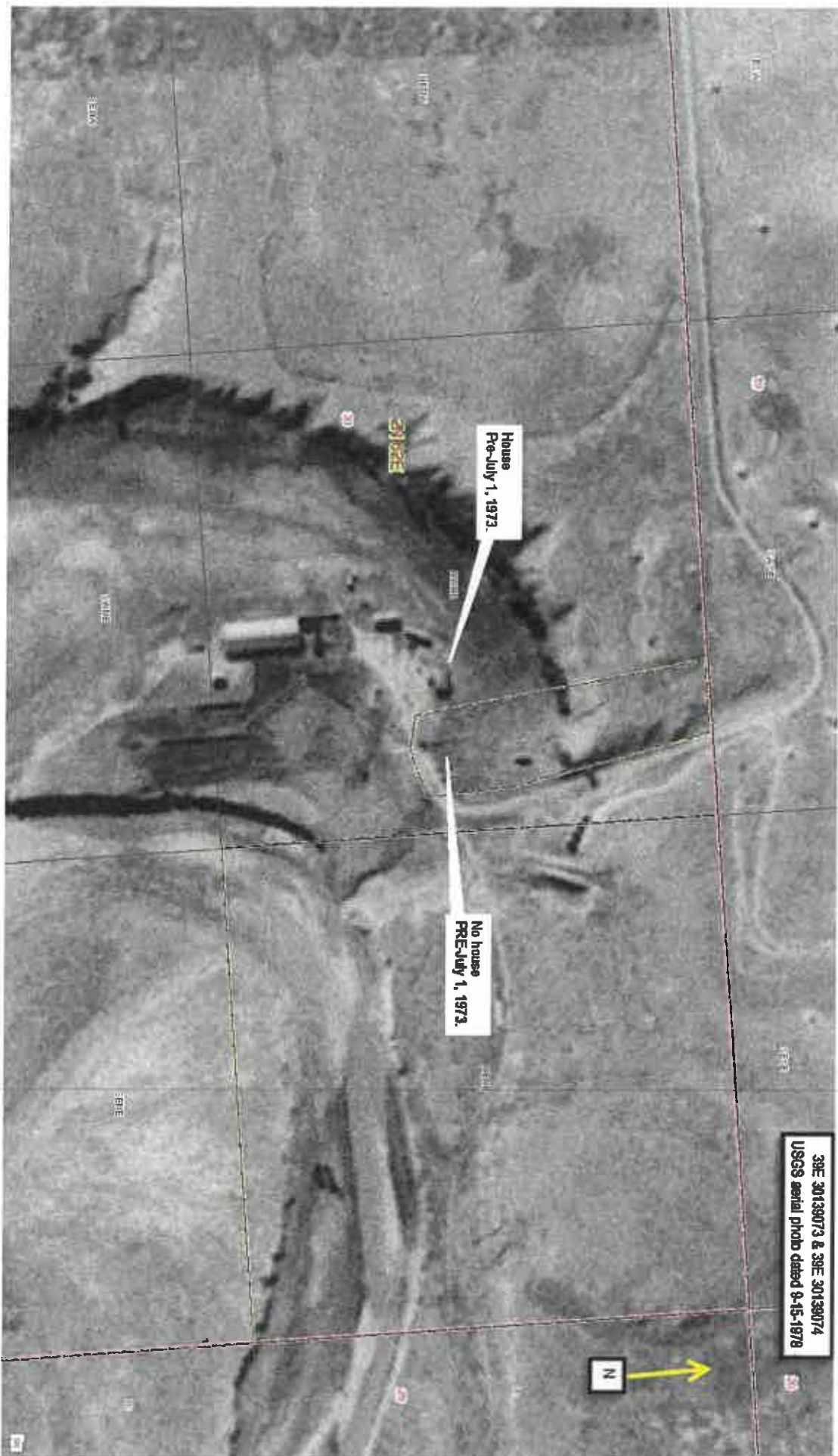
THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.



WEIR Point of Diversion SE 1/4 NW 1/4 NE 1/4 Sec 30 - 2N-62E
Place of use



39E 30139073 & 39E 30139074
USGS aerial photo dated 8-15-1978

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 30139074 STATEMENT OF CLAIM
Version: 1 – ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726
MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959
Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Maximum Flow Rate: 30.00 GPM
Maximum Volume: 1.80 AC-FT
Households: 1
Maximum Acres: 0.50
Source Name: GROUNDWATER
Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNE	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWNE	30	2N	62E	FALLON

Total: 0.50

Geocodes/Valid: 39-1173-30-1-02-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139073

30139074

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30139071

30139073

30139074

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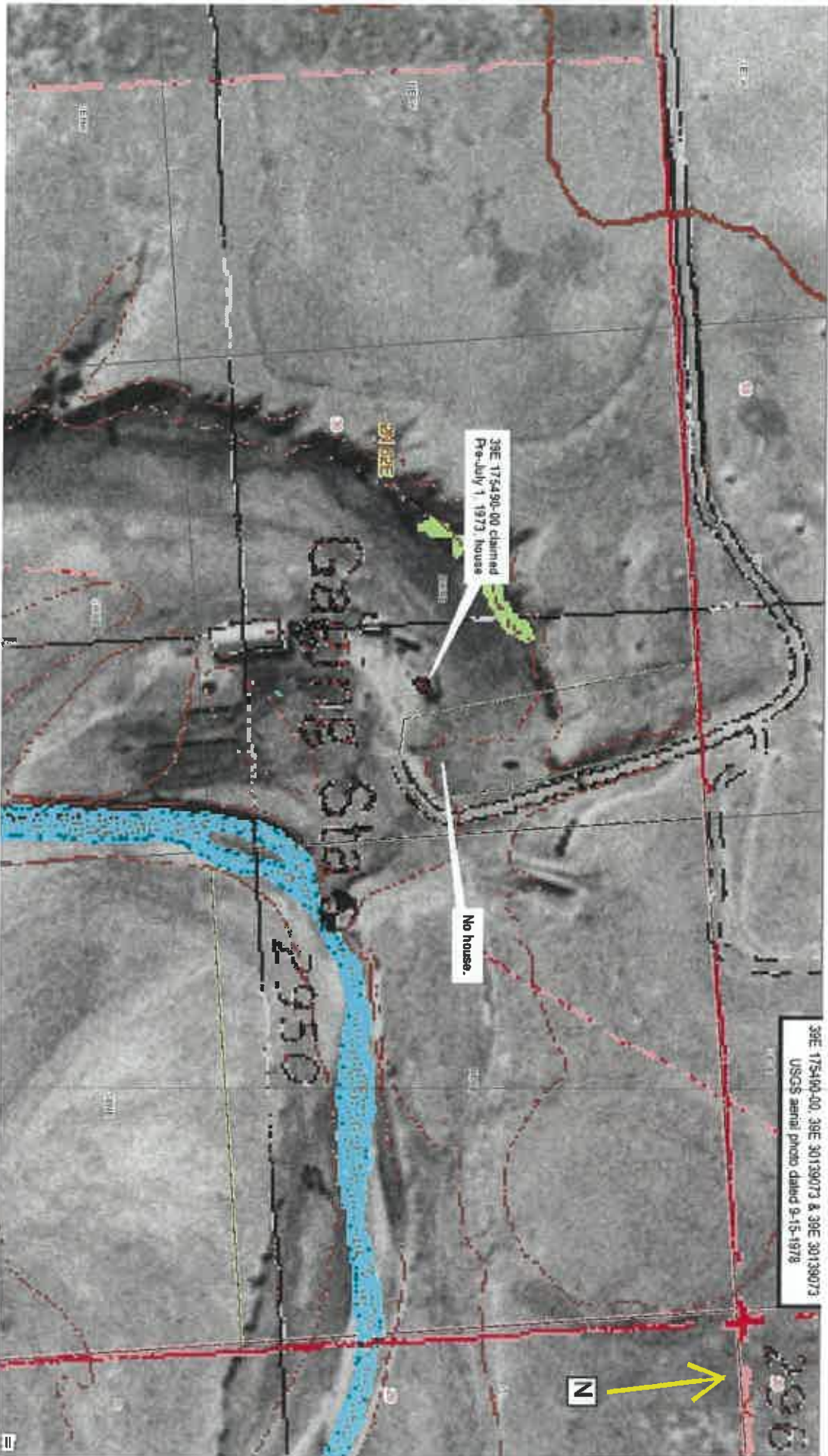
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

2 Co3 servitio

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Place of use



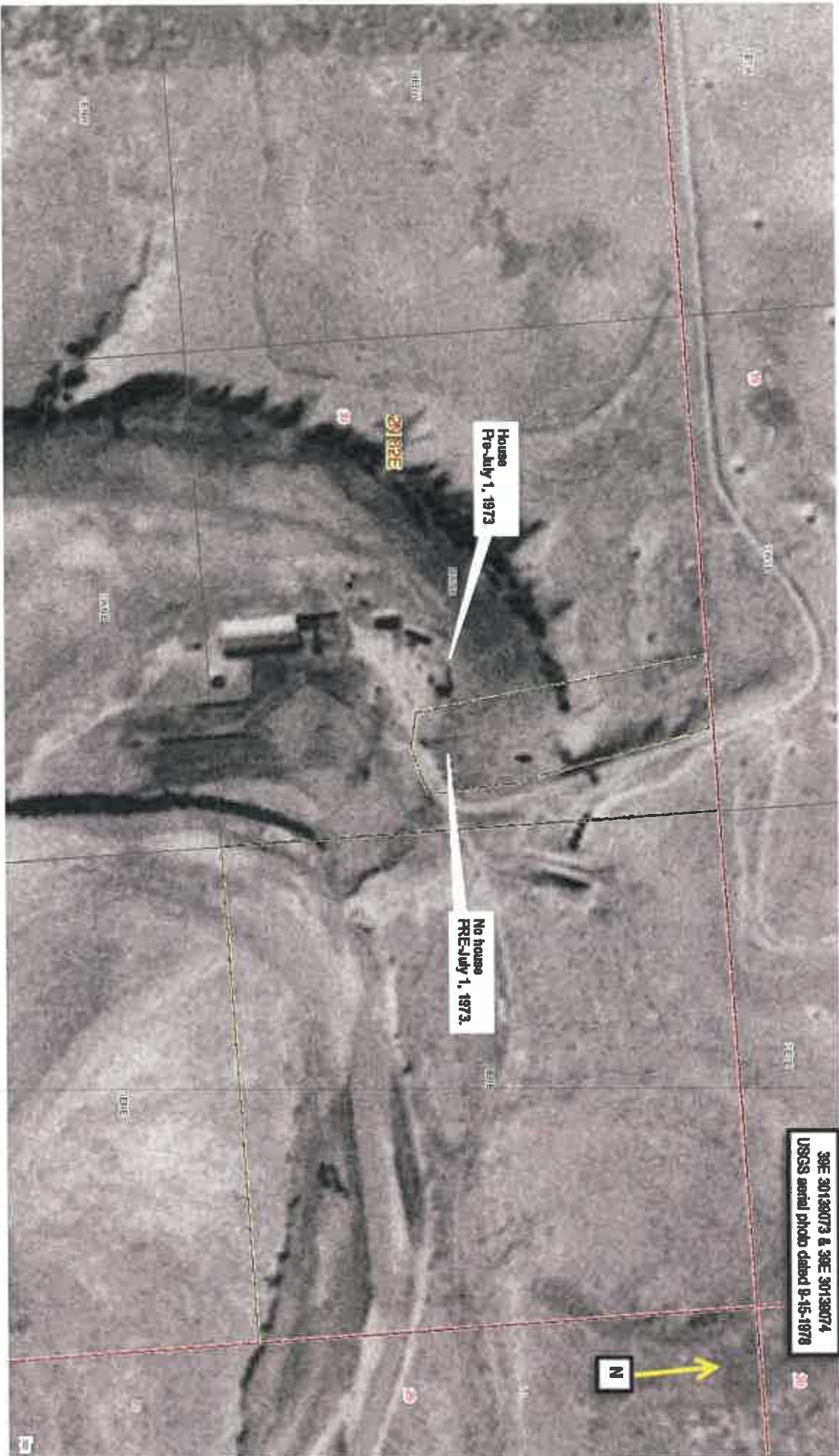
39E 175490-00, 39E 30139073 & 39E 30139073
USGS aerial photo dated 9-15-1978

39E 175490-00 claimed
Pre-July 1, 1973, house

No house.

N

Garage 6190
2950





39E-0166-P-2022

From: [Bart Burdick](#)
To: [Watercourt \(Bozeman\)](#)
Subject: [EXTERNAL] HP Smart
Date: Friday, January 6, 2023 5:23:33 PM
Attachments: [Handwritten 2023-01-06 171516.pdf](#)

January 6, 2023
Montana Water Court

RE: Case No: 39E-0166-P-2022

Claims: 39E 30139071

There is a clerical error when comparing the second page of the Water Court's Order dated 12/23/2022 and the blue marked General Abstract found in Brandy Gray's Memorandum for 39E 30139071. The attached Correction document would correct the error.

Please let us know if you receive this communication. Thanks, Barton Burdick

Sent from [Mail\[go.microsoft.com\]](mailto:Mail[go.microsoft.com]) for Windows

• Claim 39E 30139071:

- The place of use will be modified as follows:

Place of Use:

ID	Acres	Cont.Lot	Dir.Sec	Sec	Twp	Rge	County
1			NWNE	30	2N	62E	FALLON
2			SWNE	30	2N	62E	FALLON
3			NENW	30	2N	62E	FALLON
4			SWNW	30	2N	62E	FALLON
5			SWNE	25	2N	61E	FALLON
6			SENE	25	2N	61E	FALLON
7			NESW	25	2N	61E	FALLON
8			SWSE	24	2N	61E	FALLON
9			NWSE	24	2N	61E	FALLON
10			SENE	24	2N	61E	FALLON

REMOVE

KEEP

- The claim will be changed to a "use" right.
- The multiple use remark will be modified to reflect that it is a multiple use with claim 39E 175471-00 (in this Case), and 39E 175470-00 (not in front of the court)
- The issue remarks will be removed from the claim.

We discovered a clerical error on the second page of the Water Courts Order dated 12/23/2022 in regards to 39E 30139071.

Sincerely,

Barton J. Burdick 1-6-2023

Marilee Burdick 1-6-2023

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Billings Water Resources Office



GREG GIANFORTE, GOVERNOR

PHONE: (406)247-4415
FAX: (406)247-4416

Airport Business Park
1371 Rintop Dr, Billings, MT 59105-1978

DATE: January 6, 2023

FROM: Brandy Gray
Billings Water Resource Specialist

TO: Barton J. Burdick and Maralee Burdick

RE: Case No.: 39E-0166-P-2022
Claims: 39E 30139073, 39E 30139074

INTRODUCTION:

The December 23, 2022, Order from the Montana Water Court required you to file evidence with the Montana Water Court, addressing the concerns DNRC raised in their November 14, 2022, Memorandum, regarding claims 39E 30139073 and 39E 30139074, by January 3, 2023. If nothing is filed by the deadline, the Water Master will conclude that you agree claims 39E 30139073 and 39E 30139074 should be dismissed, as recommended by DNRC. It was recommended you contact DNRC in an effort to address their concerns.

MATERIALS REVIEWED:

- Information in the claim files.
- USGS Topographic Map for the areas below.
- Earth Explorer USGS aerial photo no. 1VEQM00020077, dated September 15, 1978: <https://earthexplorer.usgs.gov/>
- MT State Library NAIP true color and false color aerial photos dated, 2009, 2011, 2013, 2015, 2017 & 2019.

CLAIMS 39E 30139073 & 39E 30139074: 1959 DOMESTIC, in Section 30, T2N, R62E, from a well.

Issue Remarks:

DUI5 – THIS CLAIM AND DECREED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.

P355 – THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

On January 4 and 5, 2023, you contacted DNRC and emailed them a marked copy of the 1978 aerial photo, that was submitted with the November 14, 2022, DNRC Memorandum. During the phone call you stated that there had been fires and some of the structures had to be rebuilt. You further stated

that the furthest east dwelling is the main house (39E 175490-00), the middle dwelling is a guest house (39E 30139073), and the furthest west dwelling is a bunk house (39E 30139074).

DNRC reviewed the files and claim maps for 39E 175490-00, 39E 30139073 and 39E 30139074. DNRC also reviewed the above 1978 USGS aerial photo and was able to locate all three dwellings within the SENWNE of Section 30, T2N, R62E, that existed prior to July 1, 1973. Therefore, these three water rights do not appear to be duplicate. In the DNRC Memorandum dated November 14, 2022, it appeared that two of the now identified dwellings, were barns or outbuildings and that is why these claims appeared duplicate at the time.

Furthermore, per our conversation, it appears that the type of historical right for the above water rights are not filed rights but use rights. To correct the water right and resolve the priority date issue remarks (P355), you will need to be amended both water rights to use rights.

RECOMMENDATION:

Based on the above information, it is recommended that you amend the type of historical right for 39E 30139073 and 39E 30139074 to use. If this is done, then the priority date issue remarks (P355) would be resolved and could be removed. DNRC has provided you with the form needed to amend the type of historical right, for 39E 30139073 and 39E 30139074, to use rights.

It is further recommended, based on the above information, our conversation, and the aerial photo you provided, that the duplicate issue remarks (DUIS) on 39E 30139073 and 39E 30139074, be removed by the Montana Water Court, as they appear resolved. Water right no. 39E 175490-00, 39E 175491-00, 39E 30139071, 39E 30139073 and 39E 30139074 are now considered multiple use.

If you agree with the above recommendations, you will need to fill out, sign and send the Verified Motion to Amend Water Right Claim to the Montana Water Court, along with this letter, the attached aerial photos and the blue marked General Abstracts.

If you have questions or need further assistance, please feel free to contact me.

Sincerely,

/s/ Brandy Gray
Brandy Gray, Water Resources Specialist
MT DNRC-Water Resources Division
Billings Water Resources Office
1371 Rimtop Dr., Billings, MT 59105
406-247-4426 - 406-247-4416 fax
Brandy.Gray@mt.gov

Enclosures:

- Verified Motion to Amend Water Right Claim for 39E 30139073 & 39E 30139074.
- 39E 30139073
 - Blue marked General Abstract.
 - 1978 Earth Explorer USGS aerial photo.
- 39E 30139074
 - Blue marked General Abstract.
 - 1978 Earth Explorer USGS aerial photo.

STATE OF MONTANA)
) ss.
COUNTY OF FALLON)

VERIFIED MOTION TO AMEND WATER RIGHT CLAIM

(Describe the proposed amendment, and the historical use of the water right as it relates to the proposed amendment. The following changes should be made to correct the abstract of this claim so it reflects this right as it existed prior to July 1, 1973. If the proposed amendment involves the place of use, acres irrigated, point of diversion, or source of the water right, attach a map showing the proposed amendment.)

Water Right No: 39E 30139073 and 39E 30139074

Case No: 39E-0166-P-2022

Owners: Barton J. Burdick and Maralee Burdick

The type of historical right needs to be corrected to reflect the historic use.
Therefore, it is requested that the below be amended to:

Type of Historical Right: USE

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct. (Please include signatures of all owners. Additional proceedings will be required if all signatures are not included.)

Barton J. Burdick
Barton J. Burdick

1-6-2023
(Date)

Maralee Burdick
Maralee Burdick

1-6-2023
(Date)

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 30139073 STATEMENT OF CLAIM
Version: 1 – ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BARTON J BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726
MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959
Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: FILED USE

Purpose (Use): DOMESTIC

Maximum Flow Rate: 30.00 GPM

Maximum Volume: 2.76 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWNNE	30	2N	62E	FALLON

Total: 0.50

Geocodes/Valid: 39-1173-30-1-02-01-0000 - Y

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30139073 30139074

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30139071

30139073

30139074

175490-00

175491-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 12/23/2019: TO MULTIPLE USE.

DUIS

~~THIS CLAIM AND DECREEED WATER RIGHT NO. 39E 175490-00 APPEAR TO BE DUPLICATE FILINGS. ALL ELEMENTS EXCEPT ACRES CLAIMED AND VOLUME CLAIMED ARE THE SAME.~~

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

P355

~~THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.~~

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number: 39E 30139074 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Version Status: ACTIVE

Owners: BARTON J BURDICK
2867 WEBSTER RD
BAKER, MT 59313-9726
MARALEE BURDICK
2667 WEBSTER RD
BAKER, MT 59313-9726

Priority Date: APRIL 30, 1959
Enforceable Priority Date: APRIL 30, 1959

Type of Historical Right: FILED USE

Purpose (Use): DOMESTIC

Maximum Flow Rate: 30.00 GPM

Maximum Volume: 1.80 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	30	2N	62E	FALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 to DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SEWNNE	30	2N	62E	FALLON

Total: 0.50

Geocodes/Valid: 39-1173-30-1-02-01-0000 - Y

Remarks:

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30139073 30139074

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30139071

30139073

30139074

175490-00

175491-00

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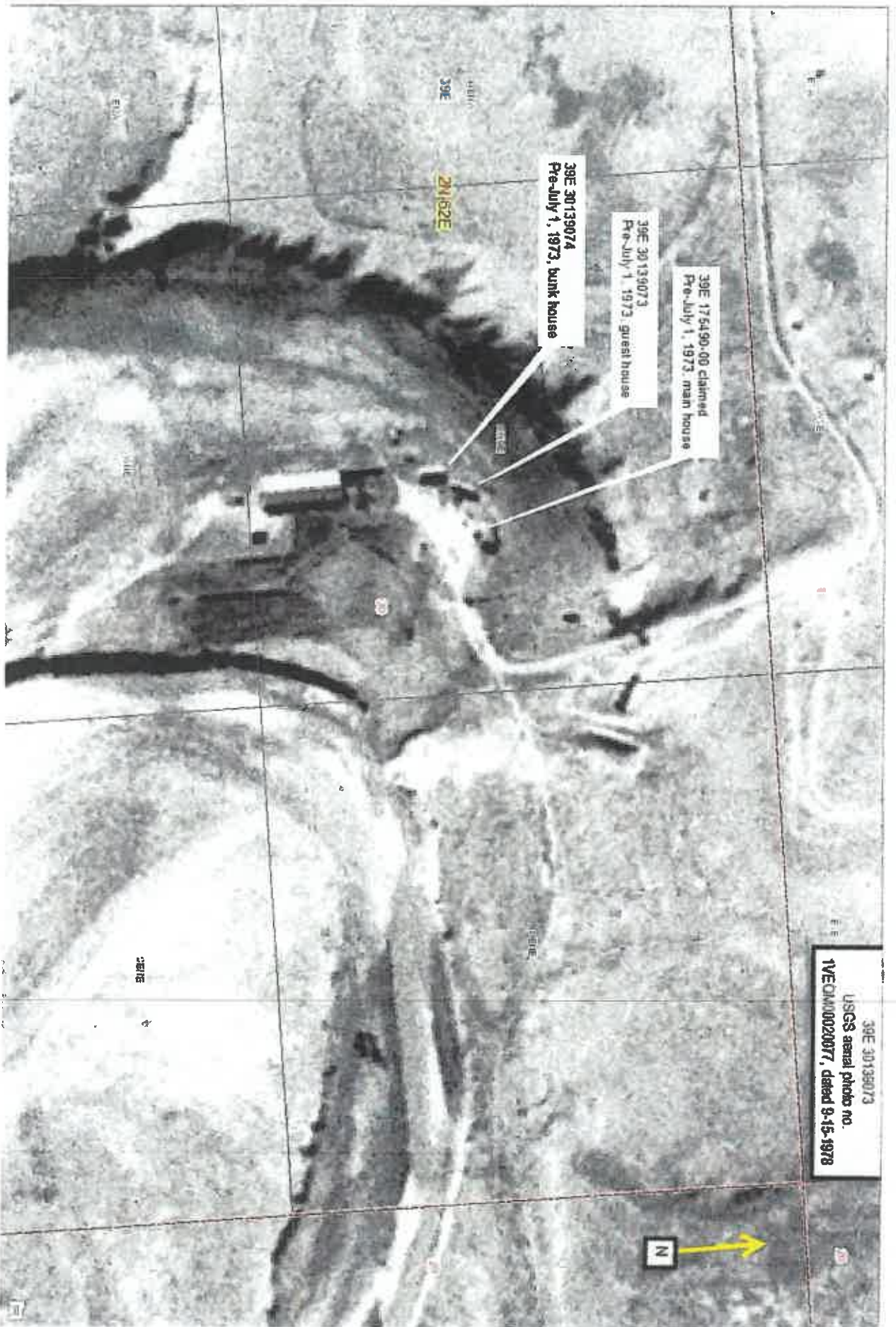
DUIS

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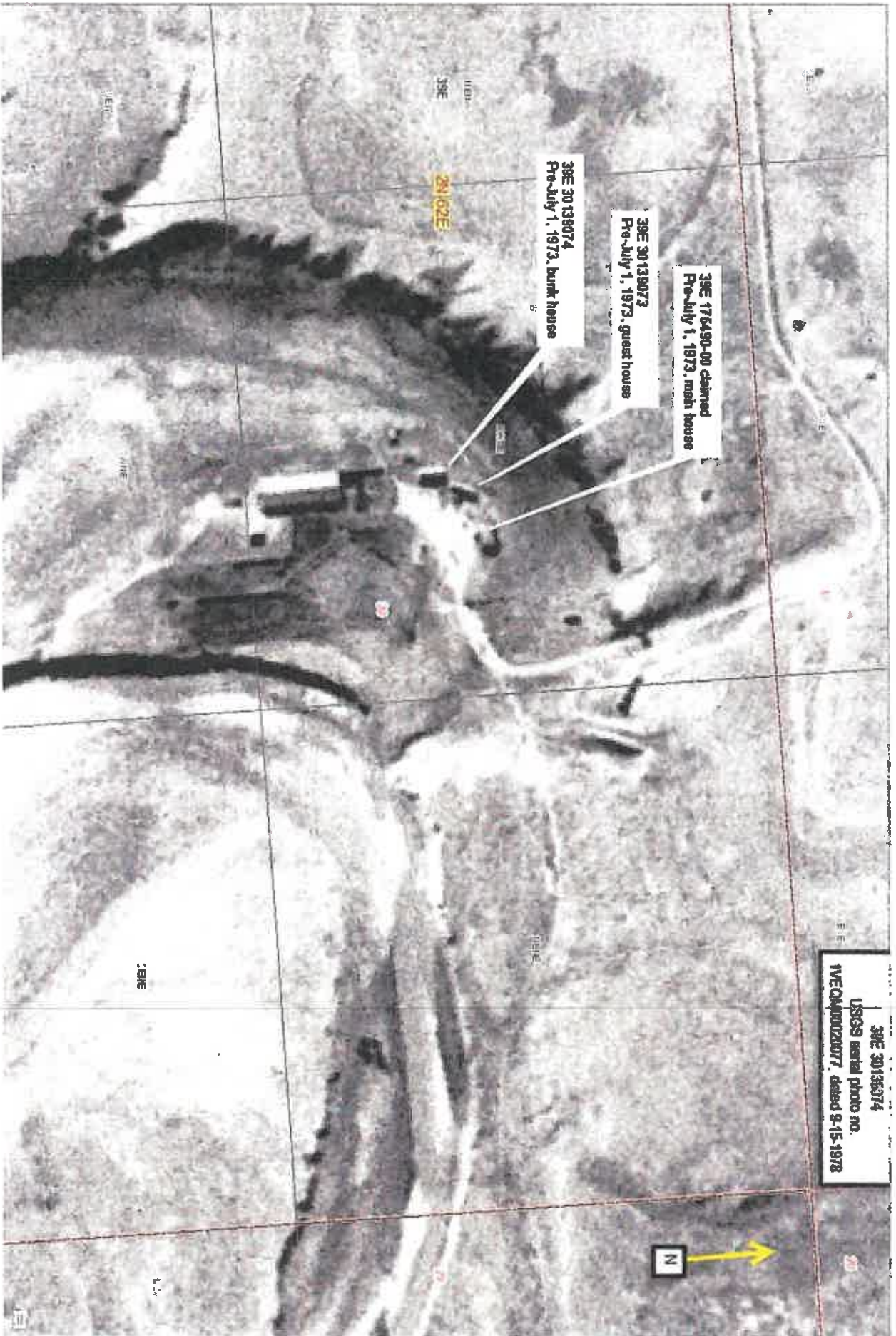
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 39E DECREE ISSUED 02/01/1985.

P355

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39E 30139073
USGS aerial photo no.
1VEOM002007, dated 8-15-1978



39E 30136074
USGS serial photo no.
WECM00020077, dated 8-15-1978